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THE PACTUM CALLIXTINUM AN INNOVATION IN PAPAL DIPLOMACY¹

The Laureate of the Augustan Age anathematizes the author who harks back to the story of Leda's eggs to account for the Trojan War. Yet, rhetorician's rules must be discarded when it is necessary to investigate the beginnings of an episode such as the Pactum Callixtinum and discuss it intelligibly.

The Pactum Callixtinum was an instrument which, according to certain historians, established a *via media* for the settlement of a long-standing quarrel between Henry V—the last of the Franconian Emperors—and Pope Callixtus II. It was concluded on September 23, 1122, at Worms, from which it derives the title under which it is best known.—The Concordat of Worms. We do not find the term "Concordat" in use, however, until the pontificate of Martin V (1418-1431) in a work by Nicholas de Cusa, entitled *De Concordantia Catholica*.

Though the Pactum Callixtinum was not the first ecclesiastical-political *modus vivendi* of which there is record; yet it must be regarded as the first solemnly-enacted agreement made between the Papacy and a Civil Power. Thus it is differentiated from the London Agreement which adjusted the difficulties existing between Anslem, Archbishop of Canterbury, and King Henry I (Beauclerc).

Derivatively, a Concordat is a union of wills; but canonists are not agreed as to the exact meaning of the term. It may be described as a compact dealing with ecclesiastical affairs, made between the Pope as Head of Christendom and the ruler of a Catholic State. Its purpose is to terminate, or avert, dissension between the Church and the Civil Power. Its subject matter may be: (a) spiritual; (b) mixed; or (c) temporal. It is spiritual when the matter pertains exclusively to the spiritual order, v. g., liturgical observance, or the insertion of certain formulas in the service of the Church, such as we find in the Concordat with France in 1801, and later, in Concordats with Porto Rico, Guatemala, San Salvador, and Nicaragua. It is mixed, when

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it relates to things which of their own nature do not belong to the spiritual order, such as in the Concordat with Columbia, in 1887, regarding the taxation of ecclesiastical property and the private possessions of ecclesiastics.

It does not lie within our scope to discuss at length the canonical or the legislative nature of Concordats: we state merely that three theories have been propounded; the legalist; the compact; and the privilege.

I. The legalist theory does not admit that a Concordat has the force of a bilateral contract, since it assumes that the State is above the Church, and being supreme, it cannot make such an agreement with a subordinate body.

II. The compact theory on the contrary, regards a Concordat as a bilateral contract.

III. The privilege theory views a Concordat as lacking the force of a true contract and imposing an obligation on the Civil Power alone; while, on the part of the Church, it is merely a privilege granted by the Sovereign Pontiff. To enter further into this phase of the subject would be to enter upon a domain bearing on its portals the Dantean warning—*lasciate ogni speranza*. Moreover, our field is history.

To find the origin of the Pactum Callixtinum we must make an excursus into the realm of feudalism and review briefly the investiture quarrel which the Pact is said to have ended. Feudalism is a very illusive term. It cannot be defined; but we may describe it as an organization of society during the early Middle Ages through the medium of land tenure. It had its beginnings in the intermingling of barbarian usage and Roman Law.²

The same causes that produced in the later Roman Empire the disappearance of a middle class operated on the teutonized Latins and the latinized Teutons to develop the complete system of feudalism. These causes were: taxation; royal grants of fief-land; the capitularies of the Frankish kings; and international war. Its three distinguishing features were: territorial possession, or fief; vassalage; and the privilege of immunity. "The Middle Ages were essentially unpolitical. Ideas as familiar to commonwealths of antiquity as to ourselves, ideas of the common good as the object of the State, of the rights of the people, of the com-

² MAINE, *Ancient Law*. London, 1906.

parative methods of different forms of government, were to them, though sometimes carried out in fact, in their speculative form unknown, perhaps incomprehensible. Feudalism was a social and a legal system, only indirectly and by consequence, a political one.”³

Ecclesiastical feudalism was a necessary result of the contact of the Church with the Germanic peoples. This contact had a very marked influence on the episcopal office and dignity, in so far as these were connected with the merely external aspects of social and political life. While it is quite true that some bishops and abbots, desirous of coming into possession of allodial estates, acted from purely sordid motives, yet it cannot be denied that the spiritual seed sown among the rude peoples of the North would never have reached its full maturity had not the clergy entered into close relations with the powerful lords who commanded the respect of the lower orders. Hence it was necessary that bishops and abbots should become qualified to take their places in the Diet of the Empire; and the only way apparently of rising to such distinction was to emulate the example of the lay lords and acquire landed possessions either in freehold or in fief.⁴

It seems to be an accepted fact that the spiritual lords were more popular than the secular lieges. Hence the expression: “It is good to live under the crook.” In time the evils that came to the Church through the operation of ecclesiastical feudalism outweighed the benefits. The distinction between things sacred and mundane was gradually lost sight of; ecclesiastics became vassals of kings, and as such, mingled with the worldly and shared their dissipations. Montalembert says of the period under discussion: “Kings could dispose, absolutely and without control, of all ecclesiastical dignities. All was venal, from the episcopate, and sometimes, even the papacy, down to the smallest rural benefice.”⁵ Then were sown the seeds of the long struggle between the altar and the throne, the Church and the Empire. Freedom of episcopal election disappeared; and, too often, candidates for the episcopal office were unworthy men, who were

³ BRYCE, *The Holy Roman Empire*, p. 87. New York, 1866.

⁴ A freehold, or *allodium*, was possession in absolute independence of the lord paramount; while a fief, or *beneficium*, was held on certain stated conditions, generally, a duty of military service.

⁵ *Monks of the West*, II, p. 309. London, 1896.

courtiers and not ecclesiastics. Those who held land in fief became consequently vassals of princes who, in time, assumed an attitude dangerous to the liberties and the patrimony of the Church. In the early days of the Holy Roman Empire there was absolute freedom in the choice of bishops; for this principle was guaranteed by Charlemagne and Louis the Débonaire and rigorously enforced by the decrees of the Council of Valence (A. D. 855). Later, however, the grantors of fiefs disregarded these provisions; and Charles the Bald, notwithstanding the obvious right of the Church to freedom of action, appointed court chaplains to bishoprics and sent them to metropolitans for consecration. Thus many creatures of the Crown and striplings of vicious habits were set over important sees, and even placed upon the pontifical throne.⁶

Another serious consequence of ecclesiastical feudalism was the obligation of the newly-elected bishops to take, not only the oath of personal fealty, but also an oath of feudal fealty, known as *homagium*, by which they bound themselves to serve the king in war, to appear at his court when required, to assist at tribunals, and be subject to his jurisdiction.

After taking the oath of *homagium*, the bishops-elect were "invested" with the temporalities of the Church by the transfer of the ring and the pastoral staff, or crosier—the symbols of episcopal power and dignity.⁷

Thus the spiritual lords (bishops and abbots) seemed to derive all jurisdiction, temporal and spiritual, from the hands of a layman. In connection with this abuse there arose another which perhaps had more lamentable results than investiture, viz., the crime of simony.

It was not a far step from the relations of kings and bishops to those of emperors and popes; and we find in the latter half of the eleventh century that the Franconian kings were not content to nominate bishops and abbots; they presumed even to nominate candidates for the papacy itself. Out of these pretensions came the struggle for supremacy between Gregory VII (Hilde-

⁶ Cfr. ALZOG, *Universal Church History*, Vol. ii, p. 244. Dublin 1888.

⁷ The ring and the crosier were first employed in the tenth century as the distinctive symbols of episcopal investiture, their use being analogous to that of the sword and lance in the creation of civil and military functionaries. (NATALIS ALEXANDER, *Hist. Eccl.*, saec. xi. et xii, Diss. iv).

brand) and Henry IV, and the episode of Canossa. Gregory died in exile; and Henry died without the pale. The question of investiture remained unsettled; and Henry V, the last of the Franconian dynasty, continued to invest the bishops of his own choosing. He came in conflict with Paschal II, and crossed the Alps with a powerful army to terrorize the Pope. Paschal sent plenipotentiaries to meet the Emperor at Sutri, where a truce was effected. The Emperor agreed to relinquish the right of investiture; and the Pope agreed to surrender all fiefs belonging to the empire and to forbid bishops, under penalty of excommunication, to assume any dignities to which were attached regal prerogatives, otherwise known as *regalia*. The German bishops refused to abandon the *regalia*; and many of them declared that an instrument which should deprive the Church of what justly belonged to her, was nothing short of sacrilegious in character. Whereupon, Paschal II declined to carry out the conditions of the truce, and refused to withdraw his prohibition of lay investiture. Henry then cast the Pope and thirteen cardinals into prison and refused to release them until Paschal had granted the right of investiture as an imperial privilege (*privilegium*). The Pope's weakness in the affair was severely condemned by the Gregorian cardinals, and they even accused him of heresy. In the Lateran synod, held in 1112, the *privilegium* was condemned as being contrary to divine and ecclesiastical law, and was denounced as a *pravilegium* (vicious law). In the same year, the Council of Vienne (September 16) condemned investitures as heretical. Here it should be noted that in those days not only formal errors of faith, but also abuses formulated into law were called heresies.⁸

During the pontificate of Paschal's successor, Gelasius II (1118-1119) there were further difficulties regarding investiture; and the climax came when Callixtus II ascended the papal throne. Henry V at the time was facing a revolution in Germany; and discontent was rife among his subjects. He made overtures to the Pope for a settlement of the investiture quarrel, with the result that Callixtus sent legates to Strasburg, who insisted that the restoration of peace both with his subjects and the

⁸ Cfr. DOLLINGER, *Church History*, trans. Cox, Vol., iii, p. 340. London, 1842.

Papacy was conditional on Henry's renunciation of the claim to investiture. To this Henry consented; but he does not seem to have had any intention of keeping his word. The result was that Callixtus excommunicated him. This notwithstanding, the Pope admonished the recalcitrant Emperor that the Church had no intention of trenching upon his rights and urged him towards concluding a pact. Accordingly, an embassy consisting of three cardinals was sent to Germany by Callixtus and negotiations for a permanent settlement of the investiture conflict were begun at Würzburg, in October, 1121. Here it was agreed that a truce should be proclaimed between Henry and his rebellious subjects: that the Church should have free use of her possessions; that the lands of those in rebellion should be restored; and that a permanent peace should be established with the least possible delay.

These decrees were communicated to Callixtus II, and he immediately despatched Cardinal Lambert of Ostia as his legate to assist at a synod to be convened at Worms. This city has had a tragic history, and it is well named "the city of dreadful strife." The synod began on September 8 and ended on September 23, 1122, on which date the agreement known as the Pactum Callixtinum was concluded. Its chief articles were substantially as follows: The Emperor shall resign to God, to Saints Peter and Paul, and to the Catholic Church, the practice of investiture; he shall permit all the churches of the empire to exercise the fullest freedom in the election and consecration of bishops as the laws of the Church require; that the election of German bishops (i. e. exclusive of Italian and Burgundian) shall take place in the presence of the Emperor; that bishops shall receive investiture of their fiefs and the royal privilege attaching to them, by the imperial sceptre; if Germans, *before*; if Italians, *after*, consecration, but in any case, after the expiration of six months. In return for these grants, bishops shall promise fealty to the Emperor. In case an election be contested, the contestants shall submit their claims to a provincial synod, by whose judgment the Emperor shall abide. You will notice that the Emperor enjoyed a wider latitude in German than in Burgundian territory and might, if he so wished, indefinitely prevent a German bishop-elect who was a *persona non grata* from entering upon his office.

⁹ Cfr. ALZOG, *op cit.*, ii, p. 385, footnote, and HEFELE, *Konziliengeschichte*, Vol. v, p. 336.

To ratify the Pact made at Worms, Callixtus II convened, on March 18, 1123, the First Council of Latern, otherwise known as the Ninth Oecumenical. This Council was most representative, as nearly three hundred bishops and six hundred abbots were present. Besides the ratification of the Pact, the Council passed twenty-three canons directed against simoniacal clerics, violators of the Truce of God, plunderers of church offerings, and forgers of ecclesiastical documents. It tacitly abolished the unwarranted claim of the right of the Emperor to interfere in papal elections; we say *tacitly*, for the fact is that the decrees of the Council did not specifically abolish this claim. Furthermore, nothing was said of the oath of *homagium* against which Urban II and Paschal II had so strenuously striven, though there can be no doubt that Callixtus II was keenly alive to the impropriety of a bishop taking such an oath, and he knew fully as well as his predecessors that the practice jeopardized the liberty of the Church. This seems to us almost inexplicable in the light of the fact that as papal legate in France eleven years before Callixtus (then Cardinal Guido), convoked an assembly of French and Burgundian bishops at Vienne where the investiture of the clergy was denounced as heretical, and sentence of excommunication pronounced against Henry V because he had dared to extort from Pope Paschal II by violence an agreement opposed to the interests of the Church.

There were many members of the Council, especially those who had endorsed the vigorous policy of Hildebrand, who disapproved of the Pact. Though certain historians designate them "zealots," it seems to us that they had solid reasons for their opposition to such an agreement. The history of subsequent conflicts between Church and State proves how broad was their vision and how solidly based their opposition.

The conciliatory attitude of Callixtus II was most favorable to the despotism of the State, whose accepted axiom was: "*Quod principi placuit legis habet vigorem.*" We may trace to this the caesarism of later years. It substituted the Royal Supremacy for the Papal Monarchy. It justified Philip the Fair and Henry VIII by anticipation, and was but a rehearsal in the twelfth century of that great anti-papal drama which the latter was to carry to its *dénouement* in the sixteenth. "It sowed the seeds of

mutual distrust between Church and State, and eventually brought about their estrangement."¹⁰

Certain writers, such as Cavagnis, De Angelis, and Gobbio do not regard this Pact as a Concordat, because it made no concession to the Emperor. Wernz, on the other hand, insists that the Pope made several important concessions to Henry V, such as granting the right to assist at episcopal elections and the privilege of exacting from bishops-elect in Germany, and from consecrated bishops in Burgundy and Italy, not merely the oath of simple fealty but even that of *homagium* by which the rights of the Church were considerably restricted.

Thus was inaugurated a system which connoted an innovation in papal diplomacy—the system of concordats, which endures to our own day. The results of this system are thus set forth by an eminent authority:

Le régime des concordats s'éloigne plus ou moins de l'union proprement dite de l'église et de l'état. Il semble même que se fait le relâchement, l'affaiblissement graduel des liens établis par la nature des choses entre les deux pouvoirs, qui ait fini par rendre nécessaire cette sorte d'alliance contractuelle. Dans ce système, la puissance religieuse et la puissance civile, voulant éviter le conflit que feraient naître certains points douteux, s'entendent pour dissiper ces doutes et régler librement quelques questions religieuses. C'est un accord partiel; lequel ne peut fonctionner efficacement qu'en autant que les parties contractantes se montrent animées de dispositions bienveillantes et d'un sincère désir de justice et de concorde.

Hence it is a fallacy to exaggerate the importance or the necessity of such agreements as was the Pactum Callixtinum; for says the same author:¹²

Trop souvent les princes abusèrent de la confiance de l'église et de la protection dont ils la couvraient pour usurper sur ses droits, pour restreindre l'exercice de

¹⁰ ALZOG, *op. cit.* ii, p. 386.

¹¹ PAQUET, *Droit Public de l'Eglise*, p. 228. Québec, 1908.

1908.

¹² *Ibid.*, p. 229.

ses pouvoirs pour s'emparer de ses biens et de ses domaines. La rudesse d'une barbarie non encore suffisamment domptée, le système féodal mêlant dans son réseau laïques et ecclésiastiques, l'orgueil, la luxure, toutes les passions mauvaises, non moins vives au coeur des rois que dans l'âme populaire contre le Saint Siège et le pouvoir religieux.

Another well known author says:

From St. Gregory to Leo X Catholic Rome represented not only a conservative tradition but a force of advance.... One antagonist, however, more formidable than speculative tenets...held out against the Pope. It was the secular spirit, the lay anti-clerical *ethos*, which, under many names had begun to stir in the feudal system itself long ago. That spirit awakened in rude....Germans like Henry V a resistance to churchmen the significance of which they could not measure.... When Frederick Barbarossa proclaimed his Divine Right of Caesar, dependent neither on Pope nor people, in the plain of Roncaglia (1158), the modern state was born.¹³

The innovation introduced by the Pactum Callixtinum was a precedent for many similar enactments which, for the past nine centuries have brought woes unnumbered to the Church. Such, for example was the Pragmatic Sanction of Bourges (July 7, 1438), to which succeeded the Concordat of 1516 concluded between Leo X and Francis I, whereby the nomination of bishops to the Sees of France became the prerogative of the king.

This, in turn gave place to the caesarism of Louis XIV, or "la liberté gallicane" which found expression in the iniquitous declaration of 1682. This famous instrument has been termed by a French author "l'anglicanisme enchaîné dans la couronne du roi trèsh chrétien."¹⁴

It may interest you to know that this had an echo on the American continent in connection with the appointment of Bishop de Mornay who governed the Diocese of Quebec, from Paris. Those familiar with the ecclesiastical history of Louisi-

¹³ BARRY, "The Papal Deposing Power" in *Dublin Review*, October, 1907.

¹⁴ Cfr. PAQUET. *op. cit.*, p. 15.

ana will realize what sad episodes resulted from the administration of an absentee prelate.

From Gallicanism evolved in 1790 the Civil Constitution of the Clergy; and from the same source originated the 77 Organic Articles annexed to the Concordat of 1801, of which Baudrillart says:

Le Concordat de 1801, contrairement à ceux qui l'avaient précédé non seulement en France, mais dans tous les Etats chrétiens, ne comportait plus l'union intime et vraie de l'église et du pouvoir civil. C'était, au fond, sur cette question de principe que s'était livrée la grande bataille des négociations du pacte célèbre conclu entre Bonaparte et Pie VII.¹⁵

Perhaps many of you are not aware that, apart from the incident alluded to above in connection with the appointment of Bishop de Mornay, the Western World has experienced an aftermath of the Pactum Callixtinum. Time precludes a lengthy discussion of this phase of the subject: we narrate briefly the politico-ecclesiastical agreements which characterized Spain's colonial policy in North America.

The earliest of these dates from the year following the discovery of the Antilles by Columbus. In 1493, Alexander VI entrusted to the Sovereigns of Castile the selection of missionaries for the colonies across the sea.¹⁶ In 1501, the same pontiff granted Ferdinand and Isabella all the tithes in the colonies.¹⁷ In 1508, Julius II granted to Ferdinand and Joanna the right of appointments in the colonies without exception.¹⁸

From those concessions we can realize the condition of the Church in the Spanish colonies. It was simply a status of secular supervision which had lamentable results. The secular supremacy is best illustrated by the attitude of Charles V towards the Papacy. He, like the last of the Franconians, was a ruler of the Holy Roman Empire; and like Henry V heaped indignities upon the occupant of the papal chair. He had sent an army across the Alps in 1527 under the command of Frundsberg and Charles of Bourbon, who sacked Rome and made the Pope pris-

¹⁵ *Quatre cents ans de Concordat*, Paris, 1905. p. 17.

¹⁶ PASTOR, *History of the Popes*, Vol., iv, p. 397, Eng. trans. p. 397. London, 1895.

¹⁷ LOWERY, *Spanish Settlements in the United States*, Vol. i, p. 383. New York, 1911.

¹⁸ ENGELHARDT, *Missions and Missionaries in California*, Vol. ii. p. 671. San Francisco, 1908.

oner. Charles, we are told, expressed regret for these indignities and went into mourning with all his court, while, by his direction, the Pope was kept a captive for seven months. His absolutism in the colonies is evidenced by the following statement: "Things came to such a pass [in the Spanish colonies] that without the royal assent no ecclesiastical official, not even a sacristan, could be appointed, transferred or dismissed; none might enter or leave the colonies; diocesan or parochial boundaries might not be set down or altered; no school or convent be erected. For all practical purposes the King was, a Spanish historian terms him, the 'Vicar of the Pope'."

Furthermore, all Bulls and Briefs had to pass through the Council of the Indies which represented the King, and they could not be promulgated without its seal. The records of provincial councils and synods could not be published until the Council had examined and revised them. Even the nomination of bishops was a royal prerogative. The first bishop of Mexico, the distinguished Zumarrága, who styled himself "omnimoda potestate antistes," governed the diocese for five years before going back to Spain to be consecrated. Presumably, some of these privileges were usurped by the Spanish King; but many of them were exercised with the approval of Rome. We do not question the wisdom of the Holy See in granting these concessions; but until compelling evidence is offered, it seems quite logical to trace many of the difficulties which came to the Spanish Colonies and to other portions of the vineyard to the innovation in Papal Diplomacy introduced by the Pactum Callixtinum.

I conclude with these pertinent utterances of Pope Leo XIII: He says in the Encyclical *Immortale Dei* (November 12, 1885): "God has apportioned the government of the human race between two powers, the ecclesiastical and the civil, the former set over things divine, the latter over things human. Each is restricted within limits which are perfectly determined and defined in conformity with its own nature and special aim. There is, therefore, as it were, a circumscribed sphere in which each exercises its functions *jure proprio*." In the Encyclical *Sapientiae Christianae* (January 10, 1890) the same pontiff says: "The Church and the State have each its own power, and neither of the powers is subject to the other."

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